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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

DONALD T. STAPLEY, JR. and
KATHLEEN STAPLEY, husband and
wife,

Plaintiffs,

v.

SHERIFF JOSEPH ARPAIO and AVA
ARPAIO, husband and wife; ANDREW
THOMAS and ANNE THOMAS, husband
and wife; LISA AUBUCHON and PETER
R. PESTALOZZI, wife and husband;
DEPUTY CHIEF DAVID HENDERSHOTT
and ANNA HENDERSHOTT, husband
and wife; WILLIAM MONTGOMERY, only
in his official capacity as MARICOPA
COUNTY ATTORNEY; MARICOPA
COUNTY, ARIZONA, a municipal entity;
and DOES 1-100,

Defendants.

NO.

NOTICE OF REMOVAL

Defendants Sheriff Joseph Arpaio and Ava Arpaio, pursuant to 28 U.S.C. §§ 1441, *et seq.*, hereby file this Notice of Removal and hereby remove to this Court the State Court action described below.

1. On December 23, 2010, a civil action (original complaint) was filed in the Superior Court of Arizona, Maricopa County, Cause No. CV2010-031166, entitled Donald T. Stapley, Jr. and Kathleen Stapley, husband and wife, Plaintiffs, vs. Sheriff Joseph Arpaio and Ava Arpaio, husband and wife; Andrew Thomas and Anne Thomas, husband and

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2 wife; Lisa Aubuchon and Peter R. Pestalozzi, wife and husband; Deputy Chief David
3 Hendershott and Anna Hendershott, husband and wife; William Montgomery, only in his
4 official capacity as Maricopa County Attorney; Maricopa County, Arizona, a municipal
5 entity; and Does 1-100, Defendants.

6
7 2. This civil action (original complaint) was not served on any of the Defendants, nor
8 did any of the Defendants accept service. On April 15, 2011 Plaintiffs filed their First
9 Amended Complaint naming the same Defendants. All Defendants have either been
10 served or accepted service of the First Amended Complaint. Counsel for Defendants
11 herein, Sheriff Joseph Arpaio and Ava Arpaio, accepted service of the first amended
12 complaint on April 19, 2011. Defendants Thomas accepted service of the first amended
13 complaint on April 18, 2011. Defendants Aubuchon and Pestalozzi accepted service of
14 the first amended complaint on April 19, 2011. Defendants Hendershott accepted service
15 of the first amended complaint on April 21, 2011. Defendant Maricopa County was
16 served with the first amended complaint on April 15, 2011. William Montgomery was
17 served with the first amended complaint on April 15, 2011. This Notice of Removal is
18 timely.

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20 3. Undersigned counsel Daryl A. Audilett has communicated with counsel for each
21 and every Defendant and confirmed that each and every Defendant consents to and
22 agrees to the removal of the State Court action to Federal Court and in fact each and
23 every Defendant joins in this removal as indicated by the signature lines at the end of this
24 pleading, wherein, undersigned counsel Daryl A. Audilett has each Defendants' attorneys'
25 permission and authorization to sign on their behalf.

26 Plaintiffs also filed an affidavit of service in Maricopa County Superior Court
27 (Exhibit L attached hereto) which states they caused a process server to serve a copy
28 of the Summons, Complaint, Amended Complaint, Certificate of Arbitration to Officer

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Osolin, Maricopa County Sheriff's Office Legal Liaison Office, "who stated they are authorized to accept service for Maricopa County Sheriff Office..." To the extent that Plaintiffs are intending to assert a claim against Maricopa County Sheriff's Office, Maricopa County Sheriff's Office is not named in the Complaint as a Defendant, and is not a suable entity (see *Brillard v. Maricopa County*, 224 Ariz. 481, 232 P.3d 1263 (App. 2010)); nevertheless, Maricopa County Sheriff's Office consents to the removal of this case to U. S. District Court.

4. Copies of all process, pleadings, minute entries and orders served upon Defendants Sheriff Joseph Arpaio and Ava Arpaio in the State Court action and otherwise filed in the State Court action are attached hereto. Copies of the Complaint (Ex. A), Summons (Ex. B), Certificate on Arbitration (Ex. C), Minute Entry re Notice of Intent to Dismiss (Ex. D), First Amended Complaint (Ex. E), Acceptance of Service: Andrew Thomas and Anne Thomas (Ex. F), Acceptance of Service: Lisa Aubuchon and Peter Pestalozzi (Ex. G), Affidavit of Service on William Montgomery (Ex. H), Affidavit of Service on Maricopa County (Ex. I), Acceptance of Service: David Hendershott and Anna Hendershott (Ex. J), Acceptance of Service: Joseph Arpaio and Ava Arpaio (Ex. K) and Affidavit of Service on Maricopa County Sheriff's Office (Ex. L) are attached as Exhibits A, B, C, D, E, F, G, H, I, J, K, and L respectively.

5. This action is a civil action over which this Court has original jurisdiction under 28 U.S.C. §1331, and is one which may be removed to this Court by Defendants pursuant to the provisions of 28 U.S.C. §1441(b). Plaintiffs are asserting Federal claims as follows:

42 U.S.C. § 1983: Free Speech and Free Press, Law Enforcement Retaliatory Conduct, Abuse of Process and Abuse of Power in violation of Amendments I, IV, V, VI and XIV to the United States Constitution and/or the privileges and immunities clause of the United States Constitution.

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42 U.S.C. § 1983: Unconstitutional policies, customs and failure to train in violation of Amendments I, IV, V, VI and XIV to the United States Constitution and/or the privileges and immunities clause of the United States Constitution.

42 U.S.C. § 1983: Substantive due process rights in violation of Amendments I, IV, V, VI and XIV to the United States Constitution, under color of law in violation of 18 U.S.C. § 242 and in violation of 18 U.S.C. § 241.

42 U.S.C. § 1983: Equal Protection rights in violation of Amendments I, IV, V, VI and XIV to the United States Constitution.

Conspiracy to violate 42 U.S.C. § 1983 and/or rights pursuant to the United States Constitution and/or its Amendments.

Racketeering violations pursuant to 18 U.S.C. § 1961, et seq.

6. The Plaintiffs in the State Court action also allege state law claims:

Malicious Prosecution (2 claims)

False Arrest

Wrongful Imprisonment

Wrongful Institution of Civil Proceedings

Defamation

Pattern of Unlawful Activity pursuant to A. R. S. § 13-2301, et seq., and claim for treble damages and attorney's fees pursuant to A.R.S. § 13-2314.04

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Aiding and Abetting Tortious Conduct

Abuse of Process

Negligent/Intentional Infliction of Emotional Distress

Negligence

Gross Negligence

Obstruction, in violation of A.R.S. 13-2402

7. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §1367.

8. Promptly after filing this Notice of Removal with this Court, undersigned counsel certifies that these Defendants on this date will serve by U.S. Mail written notice of removal to counsel for Plaintiffs and to counsel for all Defendants and will this date file a copy of the notice with the Clerk of the Superior Court for Maricopa County.

WHEREFORE, Defendants Sheriff Joseph Arpaio and Ava Arpaio request that the Maricopa County Superior Court civil action Cause No: CV2010-031166 be removed to the United States District Court for the District of Arizona.

WHEREFORE, this notice of removal is joined in by Defendants Andrew Thomas and Anne Thomas, Lisa Aubuchon and Peter R. Pestalozzi, David Hendershott and Anna Hendershott, William Montgomery, and Maricopa County.

DATED this 5th day of May, 2011.

KIMBLE, NELSON, AUDILETT & KASTNER, P.C.

/s/ Daryl A. Audilett

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Copy of the foregoing mailed this
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By _____ MLS _____